

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7566-E
)	CSR 7569-E
Petitions for Determination of Effective)	CSR 7667-E
Competition in various Franchise Areas in)	
Pennsylvania		

MEMORANDUM OPINION AND ORDER

Adopted: May 14, 2008

Released: May 15, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable systems serving the communities listed on Attachment B and hereinafter referred to as Group B Communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in the petitions with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to

⁶47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 4-5.

¹²*See* Petitions at 4-5 and Exhibit 2.

¹³*See* Petitions at 3.

¹⁴*Id.* 5-6. Comcast cannot determine the largest MVPD in the following Communities: (CSR 7566-E – Rimersburg and Toby); (CSR 7569-E – Hookstown, Independence and Potter). Comcast states that it is immaterial in these Communities which MVPD is the largest because both the DBS and the cable numbers surpass the 15 percent

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determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a five digit zip code basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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threshold. In cases where both DBS and cable penetration exceed 15 percent of the occupied households, the Commission has recognized that the second prong of the competing provider test is satisfied. In addition to satisfying the competing provider test, the Communities of Toby, Independence and Potter also satisfy the low penetration test.

¹⁵Petitions at 6-7.

¹⁶Petitions at 6-7 and Exhibit 5 (CSR 7569-E) and Exhibit 6 (CSR 7566-E and CSR 7667-E).

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **ARE REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7566-E, CSR 7569-E and CSR 7667-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7566-E

Communities	CUIDS
Emlenton	PA0516
Hovey	PA1015
Madison	PA3075
Parker	PA0518
Perry	PA1014
Piney	PA2634
Richland Calrion County	PA2358
Richland Venango County	PA3173
Rimersburg	PA1396
Sligo	PA1395
Toby	PA1601

CSR 7569-E

Communities	CUIDS
Georgetown	PA2267
Hanover	PA2476
Hookstown	PA2266
Independence	PA2891
Potter	PA2890
Raccoon	PA2264

CSR 7667-E

Communities	CUIDS
Hickory	PA2781
Mahoning	PA2871
Neshannock	PA2871
Plain Grove	PA3123
Scott	PA2847
Shenango	PA0802
South New Castle	PA1182
Union	PA0803
Washington	PA2992
Wayne	PA3076
Wilmington	PA2971

ATTACHMENT B

CSR 7566-E, CSR 7569-E and CSR 7667-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7566-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Emlenton	PA0516	54.04%	322	174
Hovey	PA1015	52.63%	38	20
Parker	PA0518	55.02%	309	170
Rimersburg	PA1396	55.93%	447	250
Sligo	PA1395	5179%	280	145
Toby	PA1601	53.72%	443	238

CSR 7569-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Georgetown	PA2267	40.30%	67	27
Hookstown	PA2476	60.61%	66	40
Independence	PA2891	27.61%	1007	278
Potter	PA2890	23.33%	210	49
Raccoon	PA2264	21.50%	1186	255

CSR 7667-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Hickory	PA2781	18.81%	925	174
Neshannock	PA2026	16.88%	3810	643
Plain Grove	PA3123	27.85%	316	88
Scott	PA2847	22.85%	814	186
Shenango	PA0802	18.82%	2854	537
South New Castle	PA1182	23.62%	309	73
Union	PA0803	19.33%	2121	410
Washington	PA2992	37.66%	259	96
Wilmington	PA2971	24.13%	949	229

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 7566-E, CSR 7569-E and CSR 7667-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 7566-E

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Percentage
Madison	PA3075	562	71	12.63%
Perry	PA1014	409	46	11.25%
Piney	PA2634	142	12	8.45%
Richland Clarion County	PA2358	213	24	11.27%
Richland Venago County	PA3173	291	11	3.78%
Toby	PA1601	443	99	22.35%

CSR 7569-E

Hanover	PA2476	1,288	185	14.36%
Independence	PA2891	1,007	214	21.25%
Potter	PA2890	210	33	15.71%

CSR 7667-E

Mahoning	PA2871	1373	168	12.24%
Wayne	PA3076	894	35	3.91%